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June 2, 2003

Mr. Richard H. Matthews  
Program Manager, National Organic Program  
USDA-AMS-TMP-NOP  
1400 Independence Ave, S.W.  
Room 4008 – So., Ag. Stop 0268  
Washington, D.C., 20250

Dear Mr. Mathews:

Re: Docket Number TMD-03-02; Comments on Proposed Rule,  
including Proposed Amendments to the National List of Allowed  
and Prohibited Substances, 68 Fed. Reg. 27,941 (May 22, 2003).

Farmers' Legal Action Group, Inc. (FLAG) submits these comments on behalf of the National Family Farm Coalition (NFFC) concerning the proposed rule to amend the National List of Allowed and Prohibited Substances, published at 68 Federal Register 27,941 (May 22, 2003).

NFFC represents 34 grassroots farm and rural advocacy organizations in more than 30 states. The coalition was formed in 1986 to coordinate the efforts of a growing network of grassroots organizations concerned with maintaining a family farm system of food production. NFFC's work includes education, outreach, and advocacy for stable rural communities, safe food, and the preservation of natural resources through family farming. NFFC has long been interested in USDA's implementation of programs affecting family farmers.

FLAG is a nonprofit, public interest law center dedicated to the preservation of family farms. For over fifteen years, FLAG has provided legal services to thousands of small and mid-sized family farmers throughout the nation in class action lawsuits, administrative proceedings, public education initiatives, and legislative technical assistance involving agricultural credit and farm program issues.

### **Comment Period Extension Requested**

NFFC requests an extension to the deadline for comments to the proposal to amend the National List at 7 C.F.R. § 205.605. NFFC requests that the deadline be extended to allow for a full 30-day comment period.

### **Statutory Design Emphasizes Public Participation**

The Organic Foods Production Act (OFPA), the governing statute for the National Organic Program, is designed with public participation at its core. The Secretary is specifically directed to issue proposed regulations to implement the program. 7 U.S.C. § 6521. In developing the organic certification program, and in particular the National List, the Secretary is to consult with a citizens' advisory board, the National Organic Standards Board. 7 U.S.C. § 6503(c). The program is to provide for public access to certification documents. 7 U.S.C. § 6506(a)(9). Detailed standards for organic livestock production are to be promulgated after public hearings, followed by notice and opportunity for comment. 7 U.S.C. § 6509(g). Certifying agents are to be subject to peer review, as well as being accredited by the Secretary. 7 U.S.C. § 6516. The important role of the National Organic Standards Board and the general public in establishing and amending the National List is set forth in 7 U.S.C. §§ 6518(k)(2) and 6517(d). Under the OFPA, the National List shall be based upon proposed amendments to the National List developed by the National Organic Standards Board. 7 U.S.C. § 6517(d)(1). The Secretary is to seek public comment on proposals to amend the National List. 7 U.S.C. § 6517(d)(4). Any person is to be able to file an administrative appeal objecting to violations of the organic certification program. 7 U.S.C. § 6520.

The National Organic Program was launched with unprecedented public participation. The initial proposed rule garnered over 275,000 comments. The second proposed rule, issued in response to the overwhelming consensus of commenters, resulted in another 30,000 plus comments. Members of the general public are clearly interested in food that is safe to eat and whose production is consistent with their values.

NFFC is very concerned that the recent practice of issuing changes to the National List with 10-day comment periods indicates a lack of commitment to public participation on the part of USDA. This would be disappointing with respect to any program, but is especially so for a program that has excited such excitement among farmers, consumers, and retailers and such lively public interest.

### **Notice and Comment Rule-Making Requires a Reasonable Period for Public Comment, 10 Days Falls Short of Reasonableness**

Many members of the public are anxious to see the National Organic Program fully implemented, but this is not good cause for such an abbreviated comment period. A 10-day comment period is simply not adequate for members of the public to become aware of a proposed rule, much less to analyze it, compare it to recommendations of the National Organic Standards Board, and submit informed comments. Just five additions to the National List may result in major changes to the rules by which organic farmers must operate. These changes take time to assess. A minimum 30-day comment period is reasonable to allow for public comment on this proposed rule and all future proposed rules.

Full opportunity for public comment is essential for the National Organic Program. As was shown with the first proposed rules in the program, public comment can help identify areas where a proposed rule may be inconsistent with the statute, unclear, or contrary to the wishes of the public. A sound rule-making process is essential to improve the soundness of the final rule.

Thank you for your consideration of these comments.

Sincerely,

FARMERS' LEGAL ACTION GROUP, INC.

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